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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT
OAKLAND DIVISION

24 HOUR FITNESS USA, INC.,

Plaintiff,

vs.

APEX STORES, LLC; APEX, LLC;
APEX AT HOME, LLC,

Defendants.

No. CV 08-01681 SBA

**[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO DISMISS
BASED ON LACK OF PERSONAL AND
SUBJECT MATTER JURISDICTION**

1 The Court, having read and considered Defendants' Motion to Dismiss Plaintiff 24 Hour
 2 Fitness' First Amended Complaint as well as 24 Hour Fitness USA, Inc.'s Opposition thereto,
 3 and all other papers and arguments submitted in connection therewith, hereby **ORDERS** as
 4 follows:

5 **IT IS HEREBY ORDERED THAT** Defendants' Apex Stores, LLC's and Apex, LLC's
 6 Motion to Dismiss Plaintiff 24 Hour Fitness' First Amended Complaint based on lack of personal
 7 jurisdiction is **DENIED**. Plaintiff 24 Hour Fitness has met its burden of demonstrating that
 8 Defendants Apex Stores, LLC and Apex, LLC have purposefully directed their activities toward
 9 California and that the exercise of jurisdiction is reasonable in this case. *See Yahoo! Inc. v. La*
 10 *Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1205 (9th Cir. 2006); *Panavision*
 11 *Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1322 (9th Cir. 1998); *Solar Gear Inc. v. Sunglass Int'l,*
 12 *Inc.*, 32 U.S.P.Q.2d 1355, 1357-58 (N.D. Cal. 1994).

13 **IT IS HEREBY FURTHER ORDERED THAT** Defendants' Apex Stores, LLC's,
 14 Apex, LLC's, and Apex At Home, LLC's Motion to Dismiss 24 Hour Fitness' First Amended
 15 Complaint based on lack of subject matter jurisdiction is **DENIED**. Plaintiff 24 Hour Fitness
 16 USA, Inc. has shown that an actual controversy existed at the time that this suit was filed and that
 17 the exercise of declaratory judgment jurisdiction is proper. *See e.g. Medimmune, Inc. v.*
 18 *Genentech, Inc.*, 549 U.S. 118, 127 S. Ct. 764, 771-72, 166 L. Ed. 2d 604 (2007).

19
 20 **IT IS SO ORDERED.**

21
 22 Dated: _____

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 25 Honorable Sandra Brown Armstrong
 26 United States District Judge
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